IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 227 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMUBHAI HIRABHAI BHARVAD

Versus

DY COMMISSIONER OF POLICE

Appearance:

1. Special Criminal Application No. 227 of 2001

MR SATISH R PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR K.T.DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/09/2001

ORAL JUDGEMENT

In this petition filed under Article-226 of the Constitution of India, petitioner has challenged the

order dated October 30, 2000 (Annexure-'B' to the petition) passed by the externing authority i.e. Deputy Commissioner of Police, Zone-II, Ahmedabad City, Ahmedabad by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad Rural, Ahmedabad City, Mehsana, Kheda and Gandhinagar and also the order dated January 11, 2001, (Annexure-C to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show-cause notice dated February 1, 2000 under Section 59 of the Bombay Police Act ('Act' for short)was issued to the petitioner, wherein, three allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, two offences under IPC are also registered in Naranpura police station, Ahmedabad against him. Therefore, by issuing show-cause notice the petitioner was called upon to show -cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The petitioner replied to the said show-cause notice. The externing Authority, after considering the reply and other documents on record, passed the impugned order of externment dated October 30, 2000 in exercise of the powers conferred under Section 56(b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated January 11, 2001 which has given rise to the present petition.

5. Mr.S.R.Patel, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he also raised the contention that in show-cause notice the activities alleged against

the petitioner were of 1999 and the cases registered against him were of 1998 whereas the impugned order was passed on October 30, 2000. He does not rest here. He further contended that though the proceedings before the externing authority were concluded on May 24, 2000 including written arguments submitted by the petitioner, the externment order was passed on October 30, 2000, therefore, there is a delay of five months and six days in passing the impugned order which is unexplained by the externing authority either in its order or by filing reply affidavit. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vices of non-application of mind, and is, therefore, liable to be quashed and set aside.

6. Mr.K.T.Dave, learned APP who appeared for the respondent State does not dispute the factual aspects and urged to pass appropriate order in the light of the settled principles enunciated by this Court.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority, as well as the order passed by the appellate Authority and other papers annexed to the petition and the judgement cited at the bar.

8. It is true that the externing Authority vide notice dated February 1, 2000 alleged about the antisocial activities carried out by the petitioner which according to the externing authority are detrimental to the maintenance of public order. Pursuant to the show-cause dated February 1, 2000 the proceedings were initiated, opportunity was given to the petitioner and the proceedings were concluded before the externing authority on May 24, 2000, the day on which the petitioner submitted his written submission. Thereafter, the externing authority did not pass order of externment for a period of 5 months which ultimately came to be passed on October 30, 2000. Therefore, on the facts and in the circumstances emerging from the record of the case, it can be said that the order of externment came to be passed after delay of 5 months and 6 days. There is no explanation coming forth from the externing authority either in the impugned order or by filing affidavit in reply why there is a delay in passing the order of externment 11. A similar question arose before the Division Bench of this Court in the case of SANTOSH RAMPRASAD SHARMA V. DEPUTY COMMISSIONER OF POLICE, CRIMINAL BRANCH, AHMEDABAD & ANOTHER - 1992 (2) GLH 457

wherein this Court has held that in externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from a particular locality or the District. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

9. A similar view is also taken by this Court in the case of CHOTHMAL SAGNSINGH RAJPUT V. STATE OF GUJARAT & OTHERS - 30(1) GLR PAGE 63.

10. Coming to the facts of the present case, at the cost of repetition, be it stated that there is a delay of 5 months and 6 days in passing the order of externment by the externing authority, which has remained unexplained. The order dated October 30, 2000 does not give any explanation as to why there is delay in passing the order of externment nor any affidavit in reply is filed to justify the delay caused in passing the order impugned.

11. Seen in the above context, I am of the opinion that the order of the externing Authority externing the petitioner and that of the appellate Authority confirming the order of externment are rendered invalid and illegal and deserves to be quashed and set aside.

12. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'B' and 'C' to the petition are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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